

## REPORTER'S RECORD

## VOLUME 6 OF 9 VOLUMES

TRIAL COURT CAUSE NO. 1364839

COURT OF APPEALS NO. 14-14-00142-CR

ROGELIO AVILES-BARROSO ) IN THE DISTRICT COURT  
Appellant )  
VS. ) HARRIS COUNTY, TEXAS  
THE STATE OF TEXAS )  
Appellee ) 337TH JUDICIAL DISTRICT

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## GUILT-INNOCENCE PROCEEDINGS

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On the 31st day of January, 2014, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Renee Magee, Judge presiding, held in Houston, Harris County, Texas;

Proceedings reported by computer-aided transcription/stenograph shorthand.

1 May this witness be excused?

2 MS. TISE: Yes, Your Honor.

3 THE COURT: You may step down, sir.

4 Please call your next.

5 MS. TISE: The State will call Ray Castro.

6 THE BAILIFF: The witness has not been

7 sworn, Your Honor.

8 THE COURT: Thank you, Your Honor.

9 (Witness sworn)

10 THE COURT: You may proceed.

11 **RAY CASTRO,**

12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 **BY MS. TISE:**

15 Q. Would you introduce yourself to the jury,  
16 please, sir?

17 A. Yes. My name is Ray Castro.

18 Q. And what do you do for a living?

19 A. I'm a lawyer.

20 Q. Okay. What kind of law do you practice  
21 specifically?

22 A. Specifically, I practice criminal law.

23 Q. And is your practice primarily here in the  
24 Harris County courthouse?

25 A. Yes, ma'am, it is.

1 Q. And, in fact, you've known Mr. Brown for years,  
2 have you not?

3 A. We have been colleagues.

4 Q. How long do you think you have known him?

5 A. Twenty-five plus years.

6 Q. And you are colleagues as members of the  
7 criminal defense bar?

8 A. That's correct.

9 Q. And you've known me a long time?

10 A. That's correct.

11 Q. How long do you think you have known me?

12 A. About the same time, if not more.

13 Q. Okay. And you also know Judge Magee?

14 A. I do.

15 Q. You are a regular here in the courthouse?

16 A. Yes, ma'am.

17 Q. A respected and experienced criminal defense  
18 lawyer?

19 A. Yes, ma'am.

20 Q. I want to ask you if at some point in time you  
21 were appointed to represent an individual by the name of  
22 Carmelo Martinez Santana?

23 A. Yes, I was.

24 Q. And who appointed you?

25 A. I believe I was appointed by Judge Guerrero.

1 Q. Okay. And you were going to represent him in  
2 his capacity as a witness, were you not?

3 A. That's correct.

4 Q. Is it fair to say that you were appointed  
5 almost immediately? Pretty much as soon as he got here,  
6 the Court was notified that he was here and he needed an  
7 attorney?

8 A. Yes. To the best of my recollection, I think  
9 that was the case.

10 Q. Okay. And what did you do after you got that  
11 appointment?

12 A. During that time, I remember I was in a trial  
13 phase, so I didn't get to see him until probably at  
14 least about two or three weeks later down the road, but  
15 I did have an interview with him.

16 Q. Okay. And did you kind of apprise yourself,  
17 basically, of why he was here and what was going with  
18 the case prior to that time?

19 A. Yes, I did.

20 Q. And when you went to see him, did you go alone?

21 A. I did.

22 Q. Okay. And did you talk to him, without going  
23 into what you said, basically about what his rights are?

24 A. Definitely, yes.

25 Q. Okay. Because you were appointed to protect

1 his rights?

2 A. That's correct.

3 Q. And that's the sole reason you were appointed?

4 A. That's correct.

5 Q. Was he charged with a crime at the time?

6 A. At the time as far as I know, no.

7 Q. Okay. Other than the federal time that he was  
8 completing?

9 A. Other than that. He already had a conviction.

10 Q. Has he been charged with a crime since?

11 A. To my knowledge at this point, no.

12 Q. Okay. Early on you learned that he had given a  
13 statement to the FBI --

14 A. That's correct.

15 Q. -- in Pennsylvania?

16 A. Yes, he did.

17 Q. Making himself a witness on this case?

18 A. That's correct.

19 Q. And you knew this was a capital murder case?

20 A. That's correct.

21 Q. And the penalties were -- are very serious?

22 A. That's correct.

23 Q. And I'm sure you talked to him about that?

24 A. We did.

25 Q. At some point during that time period do you

1 recall being contacted by me and asking if we would be  
2 able to go and interview Rudy?

3 A. Yes.

4 Q. And did you arrange for that to happen?

5 A. That's correct, I did.

6 Q. And were you present during that interview?

7 A. I was present, as far as I know, in all of the  
8 interviews that we had, yes.

9 Q. Right. You and one or both of my investigators  
10 and another attorney, Justin Wood, on some cases?

11 A. Correct.

12 Q. But you were always there when we would meet  
13 with him?

14 A. That's correct, yes, ma'am.

15 Q. Prior to our meetings with him, had you kind of  
16 had an opportunity, basically, to determine what Rudy's  
17 intentions were as far as testifying on this case?

18 A. I think he made that known to me immediately  
19 that first time that I interviewed him as to the purpose  
20 that he was here.

21 Q. And what was his intention?

22 A. To testify.

23 Q. Okay. And did you talk to him about some of  
24 the consequences of him testifying?

25 A. I did tell them the consequences of how that

1 could very well affect him down the road if, in fact,  
2 charges were pending. Whatever may have happened, that  
3 definitely would be held against him and it would not be  
4 in his best interest.

5 Q. Okay. And did he persist in wanting to  
6 testified anyway?

7 A. He did.

8 Q. Okay. In fact, was he fairly stubborn about  
9 that?

10 A. He was insistent to do that.

11 Q. And did he tell you why?

12 A. Yes. He told --

13 MR. BROWN: Objection. Calls for hearsay.

14 THE COURT: That's sustained.

15 Q. (By Ms. Tise) Did you talk to him about things  
16 like, when you testify in a situation like this it could  
17 be dangerous for you at some point, sometimes other  
18 inmate will retaliate?

19 MR. BROWN: Judge, we're going to object.  
20 That's starting to get into attorney-client privilege.

21 THE COURT: I will allow a little bit of  
22 it. I'll allow a little bit, as long as it doesn't call  
23 for hearsay.

24 MS. TISE: May we approach on that?

25 THE COURT: Yes.

1 (At the Bench, on the record)

2 MS. TISE: Mr. Brown can't invoke the  
3 attorney-client privilege for him.

4 THE COURT: I understand.

5 MS. TISE: And so, I understand you are  
6 allowing me to go there, but I just want -- in case  
7 there's further objections on that point --

8 MR. BROWN: I think -- I'm not invoking it.  
9 I just said --

10 MS. TISE: Mr. Castro can invoke it.

11 MR. BROWN: My objection was that it's  
12 basically hearsay and he's going into attorney-client  
13 privilege. What he talks about with his client is  
14 supposedly between him and his client.

15 THE COURT: Well, that's true as long as  
16 he's waiving it. And you may want to ask him that, if  
17 he is, but I'm still not going to let you go into  
18 hearsay about what the defendant said. Okay?

19 MS. TISE: I agree.

20 (Open court, defendant and jury present)

21 Q. (By Ms. Tise) I will ask you, Mr. Castro, Rudy  
22 knows that you're going to testify, does he not?

23 A. He was aware of that, yes.

24 Q. And does he have any objection to that?

25 A. No, he does not.



1 Q. Okay. And so, talking to you about your  
2 meetings with him, what were some of the things that you  
3 expressed to him -- not his responses, but what you  
4 expressed to him about things that he ought to think  
5 about before doing this?

6 A. Initially, we had gone over his version. It  
7 was over a period of maybe a couple of hours or so. And  
8 soon after we met after that, we definitely would go  
9 over the options, consequences, the range of punishment,  
10 whatever was involved here, as well as every time I  
11 always emphasized to him, you know, there's some serious  
12 dangers here in you wanting to testify and proceed to  
13 want to do that. His response was constantly that he  
14 wanted to do it.

15 Q. And those dangers included possible danger from  
16 retaliation from other inmates?

17 A. If they found out about what he was doing, yes.

18 Q. And possibly saying something that would lead  
19 to him being charged with a crime?

20 A. That was my primary concern for him, is being  
21 charged with another offense, which could very well  
22 happen.

23 Q. And you explained that to him?

24 A. Thoroughly.

25 Q. And he persisted that he wanted to do this?

1 A. Yes. Yes, ma'am.

2 Q. Why?

3 A. Primary reason -- every time I've talked to  
4 him, his primary, he wants to get it off his conscience  
5 and tell the truth. That's primarily what he was  
6 saying.

7 Q. And did he ever ask you: Should I answer the  
8 prosecutor's questions a certain way so that I won't be  
9 charged? Did he ever do that?

10 A. No, never.

11 Q. Did he ever ask you for advice on what's going  
12 to make me, you know, get drug into this case as far as  
13 the law of parties or anything like that is concerned?

14 A. No. Our primary conversations were mainly  
15 confined to what actually had happened.

16 Q. Right. And his story to you was consistent?

17 A. That's correct.

18 Q. And you were here when he testified in the last  
19 trial?

20 A. I was.

21 Q. And was it consistent with what he had said  
22 before in our meetings?

23 A. Yes, it was. At the last trial and our prior  
24 meetings, yes.

25 Q. Okay. And because you were going to testify in

1 this trial, you were unable to be present for his  
2 testimony this time?

3 A. That's correct.

4 Q. But he's always been very consistent in his  
5 story?

6 A. Yes, ma'am.

7 Q. And he never said: How do I tell my story so  
8 that I don't get into any trouble?

9 A. That's correct.

10 Q. His story was just what his story was?

11 A. That's correct.

12 Q. When we would come meet with him, you were  
13 always present?

14 A. Yes, ma'am.

15 Q. Sometimes you would help translate, would you  
16 not?

17 A. Yes.

18 Q. You are a fluent Spanish speaker?

19 A. Yes, ma'am, I am.

20 Q. And did you or he ever tell us that we couldn't  
21 ask him anything, that there was something off limits?

22 A. No.

23 Q. It was always wide open?

24 A. Yes, ma'am.

25 Q. And was this all in accordance with the way

1 Rudy wanted it to be?

2 A. Yes, ma'am.

3 Q. At any point in time did you and I or you and  
4 any member of the D.A.'s office ever talk about a deal  
5 for Rudy in exchange for his testimony?

6 A. No, ma'am.

7 Q. Did Rudy ever ask you to talk to us about a  
8 deal?

9 A. No.

10 Q. Okay. As far as you're concerned, has there  
11 ever been any assurances to you or anyone that he  
12 wouldn't be charged with a crime if the evidence led us  
13 that direction?

14 A. No, ma'am. Not even explicitly or implicitly.

15 Q. And as far as you know, I could charge him with  
16 a crime tomorrow if the evidence led me in that  
17 direction?

18 A. Which was my concern if he testified, yes.

19 Q. Sure. But -- and you explained that to him?

20 A. Very much so, yes.

21 Q. And he did not ask for or want any assurances  
22 from us?

23 A. He continued to want to -- he insisted on  
24 testifying.

25 Q. He is still in custody, correct?

1 A. Yes, ma'am.

2 Q. And why is that?

3 A. As far as I know, he was finishing out his  
4 federal sentence and I think he completed it, and he's  
5 still here.

6 Q. Okay. And he's here because he is a material  
7 witness on a capital murder case?

8 A. That's correct.

9 Q. And there is a process for that called a  
10 material witness bond, isn't there?

11 A. That's correct.

12 Q. And because he -- because he's persisting in  
13 wanting to testify, we put that material witness bond in  
14 place and that's keeping him in custody?

15 A. That's correct.

16 Q. Is it your understanding that once the material  
17 witness bond is lifted then he will be deported back to  
18 his homeland, the Dominican Republic?

19 A. Immigration procedures will definitely start  
20 soon thereafter.

21 Q. And if we didn't have a witness bond in place,  
22 the feds would have deported him and we wouldn't have  
23 him available for trial?

24 A. Immediately.

25 Q. So, that's why we have to keep him in custody?

1 A. That's correct.

2 Q. Because, otherwise, the feds are going to take  
3 him and we're going to lose him?

4 A. Right.

5 Q. He wants to go back to the Dominican Republic,  
6 doesn't he?

7 A. He is prepared to go. So, yes.

8 Q. And looking forward to being with his family  
9 and seeing them again?

10 A. That's correct, yes, ma'am.

11 Q. And you've explained to him, because he's been  
12 willing to testify in this case, that's what's keeping  
13 him in custody?

14 A. Yes. He's aware of that.

15 Q. And he continues to want to testify.

16 THE COURT: Is that a question?

17 MS. TISE: Sorry.

18 A. Yes.

19 Q. (By Ms. Tise) Does he continue to want to  
20 testify?

21 A. Yes. He will stay as long as necessary.

22 Q. Is it fair to say that, in fact, in the last  
23 trial Rudy thought he had been charged with capital  
24 murder?

25 A. Yes.

1 MR. BROWN: Objection, Your Honor --

2 A. Yes.

3 MR. BROWN: -- that's hearsay.

4 THE COURT: Hang tight a minute when one of  
5 the lawyers stand up, Mr. Castro. I know you know that,  
6 but didn't be too quick to answer if a lawyer stands up.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Thank you. Please proceed.

9 MS. TISE: I'm sorry. I didn't hear your  
10 ruling. Did you sustain it?

11 THE COURT: Well, he had already answered  
12 the question.

13 MS. TISE: Okay. I'm sorry.

14 Pass the witness.

15 **CROSS-EXAMINATION**

16 **BY MR. BROWN:**

17 Q. What's the other reason for a material witness  
18 bond?

19 A. To assure that he's here, he stays here.

20 Q. So, he can't run?

21 A. That could be another reason, too.

22 Q. If he gets deported, that's the same as  
23 running, correct?

24 MS. TISE: I'll object to that. It's not  
25 the same as running.

1 THE COURT: I will sustain the  
2 mischaracterization.

3 Q. (By Mr. Brown) If he was deported, he'd be home  
4 where he wanted to be, right?

5 A. That could be implied, yes.

6 Q. He's running, correct?

7 A. He is not here, not present.

8 Q. Now, you were appointed to be his attorney once  
9 he was brought into Houston, Harris County, Texas; is  
10 that correct?

11 A. Yes, sir.

12 Q. You were not aware of anything that was said to  
13 him in 1998 -- no -- '97 by the first investigators that  
14 went to talk to him in Orlando, Florida; is that  
15 correct?

16 A. No, I was not aware of that.

17 Q. So, you don't know if anything was said to him  
18 about what could happen to him, what deals could be  
19 made; you don't know any of that kind of information?

20 A. I was not aware.

21 Q. When he was talked to again in Pennsylvania,  
22 you weren't there at that time?

23 A. I was not present.

24 Q. So, you don't know if any deals -- anything  
25 that was said about his testimony, you weren't aware of



1 what his -- the transcripts of what his statement were;  
2 is that correct?

3 A. Just what happened here in Harris County and  
4 what he had said.

5 Q. Right. But the question is: You saw his  
6 transcript of his statements made to the FBI in  
7 Pennsylvania, correct?

8 A. I think I saw it later on after I had been  
9 appointed to represent him, but, initially, I was not  
10 aware of that.

11 Q. Now, you've been with him on one or many  
12 occasions when the D.A. went to talk to him about his  
13 testimony?

14 A. Yes. I believe about three times, if I'm not  
15 mistaken.

16 Q. Was that three times before Obel's trial?

17 A. I think before Obel's trial, it might have been  
18 twice.

19 Q. And one time before this trial?

20 A. That's correct.

21 Q. Now, I'm just going to -- you talked to him  
22 about the consequences of testifying, correct?

23 A. Right.

24 Q. You talked to him about the consequences of  
25 changing his story, too, didn't you?

1 A. That's correct.

2 Q. So, if he changes his story in any way, he goes  
3 to prison, correct?

4 A. Well, I've always admonished him about perjury  
5 issues also.

6 Q. What's the difference between explicit and  
7 implicit deals?

8 A. Explicit is coming right -- forthright and  
9 coming out and saying them. Implicitly is something you  
10 can read between the lines.

11 Q. Now, he was never given an explicit deal; is  
12 that correct?

13 A. That's correct.

14 Q. He hasn't been charged with capital murder, has  
15 he?

16 A. As far as I know, no.

17 Q. What is the implicit deal then regarding his  
18 testimony in these two trials?

19 A. Implicitly, I don't think -- we haven't even  
20 gotten close to even discussing any kind of resolution  
21 as to his status other than just testifying.

22 Q. If he testifies the way the State wants him to  
23 testify and tells the story the same way and  
24 consistently, does he go home?

25 A. At this point, if -- like I said earlier, if he

1 is finished with his federal sentence, immigration -- of  
2 course, assuming that he's let go from here, released  
3 from Harris County, then immediately has to go under  
4 immigration proceedings.

5 Q. And the Dominican Republic is home, right?

6 A. As far as I know, yes.

7 Q. So, he gets to go home, right?

8 A. That's correct.

9 Q. All right. Now, we've done this for many,  
10 many, many, many, many, many years, correct?

11 A. Yes, sir.

12 Q. All right. And a lot of what you talk to a  
13 client about is privileged as to even co-defendants and  
14 co-defendants' attorneys, correct?

15 A. That's correct.

16 Q. All right. And it's also privileged as to the  
17 D.A.'s office, correct?

18 A. Definitely, yes.

19 Q. Did you go over the police report with your  
20 client?

21 A. The police report meaning the incident report  
22 prepared for this particular case here? I don't recall  
23 that I did go over it extensively with him. I think  
24 mainly I went over the -- his version of what happened.  
25 And I think I had sort of like a synopsis of what

1 actually transpired. I think I got probably the  
2 first -- the original report. That's basically it, but  
3 as far as supplements, no.

4 Q. Did he tell you that they were in a blue car  
5 when they went and did this act on September 30th and  
6 the early morning of October 1st, 1992?

7 MS. TISE: Objection. Calls for hearsay.

8 MR. BROWN: I believe she's opened up the  
9 door, Judge, as far as attorney-client privilege, as far  
10 as hearsay. I believe he has testified already -- I'm  
11 just asking --

12 THE COURT: Well, Mr. Brown, as to hearsay  
13 that is sustained. If you are trying to impeach  
14 Mr. Carmelo Martinez Santana with something that was  
15 said to this witness, then just set it up for  
16 impeachment and I will allow that.

17 Q. (By Mr. Brown) Did he tell you why the gold car  
18 that they used had sand and dirt in it when it was  
19 returned to Charlie?

20 A. I don't recall him saying why, but I do  
21 remember him saying, yes, it did have some dirt.

22 Q. Did he tell you that he and Obel had the knife  
23 that night?

24 A. I don't recall if he said he had it, but I do  
25 remember that Obel -- he said Obel had it.

1 Q. Did he tell you that Obel was the only person  
2 with a weapon that night?

3 A. I believe, yes, that is what he had told me, if  
4 I remember correctly. I'm not sure. I can't tell you  
5 for a fact.

6 Q. Did he tell you that when he went to Diana  
7 Garcia's home he knew what was going to happen?

8 A. I don't remember if it was before or after they  
9 had left Diana Garcia's home.

10 Q. What's the definition of law of parties?

11 MS. TISE: Objection. That's calls for a  
12 legal conclusion.

13 MR. BROWN: He's a lawyer, Your Honor.

14 MS. TISE: That's true, but --

15 THE COURT: That's sustained.

16 Members of the jury, you will be instructed  
17 on what the law of parties is and how it applies for you  
18 to apply it to the facts in this case.

19 You may proceed.

20 Q. (By Mr. Brown) Did you explain to your client  
21 the differences between law of parties, conspiracy, and  
22 any other forms of legal consequences as a person who's  
23 at a criminal event?

24 A. Yes.

25 Q. You did talk to him about the difference

1 between law of parties, conspiracy, accessory,  
2 unindicted co-conspirators, all those things, didn't  
3 you?

4 A. Everything was explained to him with regards to  
5 how this could affect him.

6 Q. Did you have conversations -- and I'm not  
7 asking what you said, but did you have conversations  
8 outside of the presence of your client with the district  
9 attorney's office?

10 A. As far as making arrangements for meetings and  
11 scheduling purposes. And I think there may have been  
12 some other things, but I don't think it was very  
13 relevant to the case that's being tried or any of the  
14 cases that were being tried.

15 Q. Did you ever go to the D.A.'s office and ask  
16 for a deal?

17 A. No.

18 Q. Did they come to you and say there would be no  
19 deals?

20 A. No.

21 MR. BROWN: Pass the witness.

22 THE COURT: Thank you.

23 Anything further, Ms. Tise?

24 MS. TISE: No, Your Honor.

25 THE COURT: May the witness be excused?

1 MS. TISE: Yes, Your Honor.

2 MR. BROWN: Yes, Your Honor.

3 THE COURT: Step down. Thank you,

4 Mr. Castro.

5 Please call your next.

6 MS. TISE: State calls Kerry Gillie.

7 THE COURT: Please raise your right hand.

8 (Witness sworn)

9 THE COURT: Please be seated.

10 You may proceed, Ms. Tise.

11 **KERRY GILLIE,**

12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 **BY MS. TISE:**

15 Q. State your name, please, sir.

16 A. My name is Kerry Gillie. I'm a licensed police  
17 officer investigator employed here at the Harris County  
18 D.A.'s Office.

19 Q. Can you tell the jury a little bit about your  
20 background?

21 A. I have had over 30 years of law enforcement  
22 experience. The majority of that has been in the  
23 investigative side. I retired as a detective from the  
24 Deer Park P.D. and was recruited by the Attorney  
25 General's Office to do fraud. When I was there, after

**REPORTER'S CERTIFICATE**

THE STATE OF TEXAS     )  
COUNTY OF HARRIS       )

I, Mary Ann Rodriguez, Official Court Reporter in  
and for the 337th District Court of Harris County, State  
of Texas, do hereby certify that the above and foregoing  
contains a true and correct transcription of all  
portions of evidence and other proceedings requested in  
writing by counsel for the parties to be included in  
this volume of the Reporter's Record, in the  
above-styled and numbered cause, all of which occurred  
in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of  
the proceedings truly and correctly reflects the  
exhibits, if any, admitted by the respective parties.

WITNESS MY OFFICIAL HAND this the 3rd day of March,  
2014.

/s/ Mary Ann Rodriguez  
Mary Ann Rodriguez, Texas CSR 3047  
Expiration Date: 12/31/2015  
Official Court Reporter  
337th Court  
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